

# In the Supreme Court of the United States

OCTOBER TERM, 1947

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No. 480

SECURITIES AND EXCHANGE COMMISSION,  
PETITIONER

v.

PHILADELPHIA COMPANY

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE DISTRICT OF  
COLUMBIA

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REPLY MEMORANDUM FOR THE PETITIONER

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## I

Respondent Philadelphia Company states that the case presents in last analysis a conflict of jurisdiction between the Commissioner and the reorganization court. The petition for certiorari does not seek a ruling as to the jurisdiction and procedure of the reorganization court but as to the jurisdiction of the court below to pass upon the jurisdiction of the reorganization court. We believe that the reorganization court, when and if a controversy is presented in concrete form,

(1)

is the only court which has jurisdiction to decide, in the first instance, the effect upon its own jurisdiction and procedure of the Commission's amendment to Rule U-49 (c) under the Public Utility Holding Company Act.

Respondent also urges that the petition for a writ of certiorari is premature, and also that the stay orders of the court below are not reviewable on writ of certiorari. *Federal Power Commission v. Metropolitan Edison Company*, 304 U. S. 375, cited by respondent (p. 8) is itself an answer to both of these contentions. In that case a writ was granted, and ultimately this Court reversed an order of a circuit court of appeals which (1) denied a motion to dismiss a proceeding for review of an interlocutory administrative order and (2) continued a temporary stay of administrative proceedings.

The question of whether the validity of the ~~Commission's~~ amendment to Rule U-49c may be decided in due course in the reorganization proceeding itself, or whether the court below should resolve it in the guise of reviewing as an "order" the Commission's amendatory action, should be decided by this Court before, rather than after, a decision on the merits. Review by this Court after a decision on the merits—whether before or against the validity of the rule—would not protect the reorganization court from the embarrassment of an advisory ruling by a circuit court of appeals outside its own circuit, nor protect the Com-

mission from delaying the reorganization court's coming to grips with any problems which the amendatory action will present in that court. Similarly the improvident stay order of the court below calls for summary corrective action to protect the administrative process from interference in contravention of repeated rulings of this Court.

## II

Respondent urges that the record before this Court is not the same as the record before the court below when it denied the Commission's motion to dismiss. The first order sought to be reviewed, which denied the Commission's motion to dismiss and granted a stay, was decided on the basis of affidavits which described the proceedings before the Commission leading to the adoption of the disputed amendment to Rule U-49 (c). After that decision and before moving to modify the stay the Commission certified a transcript of the administrative proceedings (R. 308-309, 480). Respondent points to no material respect in which the facts revealed by the full administrative record as certified to the court below differs from the facts as presented in connection with the motion to dismiss. Since the court below had before it the full administrative record when it considered and denied the Commission's motion to modify the stay, which is the second of the orders sought to be reviewed, there can be no question

but that the full administrative record is properly before this Court whether or not this Court should deem it relevant to the review of the first of the two orders of the court below.

Respectfully submitted.

✓ PHILIP B. PERLMAN,  
*Solicitor General.*

✓ ROGER S. FOSTER,  
*Solicitor,*  
*Securities and Exchange Commission.*

JANUARY 1948.

